IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12159 of 1993

with

SPECIAL CIVIL APPLICATION No 12160 of 1993
with
SPECIAL CIVIL APPLICATION NO.9027 of 1994;8758 of 1999, 8759 of 1999; 2058 of 2000; 11947 of 2002; 11941 of 2002;

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIST AGRICULTURE OFFICER

Versus

JUNAGADH JILLA MAZDOOR SANGH,RAJKOT

Appearance:

1. Special Civil Application No. 12159 of 1993
MR HARIN P RAVAL for Petitioner No. 1
MR HS MUNSHAW for Petitioner No. 1
MRS DT SHAH for Respondent No. 1

2. Special Civil Application No. 12160 of 1993
MR HARIN P RAVAL for Petitioner No. 1
MRS DT SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 27/11/2003

ORAL JUDGEMENT

Heard learned advocate Mr.H.S.Munshaw on behalf of District Panchayat, Junagadh, learned Government Pleader Mr.A.D.Oza, learned Assistant Government Pleader Mr.M.R.Mangday appearing on behalf of State of Gujarat and learned advocate Mrs.D.T.Shah on behalf of respondent workmen. This group of all the petitions, wherein award passed by the Industrial Tribunal, Rajkot is challenged and all the petitions are arising from the award in question challenged by the District Panchayat as well as the State of Gujarat and therefore, all petitions are disposed of by this common judgment.

2. The District Panchayat as well as the Director of Agriculture Department has challenged the award passed by the Industrial Tribunal, Rajkot in Reference I.T.R.Nos.267 of 1988 and 268 of 1988 dated 13th October 1992, wherein Industrial Tribunal, Rajkot has granted the benefit of permanency in favour of 10 workmen on the basis of Government Resolution dated 17th October 1988 and Industrial Tribunal has also granted the arrears and difference of salary being a permanent employees with effect from 15th November 1988.

3. When the petitions are admitted on that occasion it is necessary that elaborated arguments were advanced by the learned senior advocate Mr.P.M.Raval at the relevant time before this Court, challenging the award in question and after considering the detailed submissions made by the learned senior advocate Mr.Raval, this Court has passed an interim order on 3rd October 1994 (Coram: Mr.H.L.Gokhale, J). The interim order is relevant and therefore, quoted as under :-

"1 Heard Mr.P.M.Raval, Senior advocate with Mr.Munshaw for Junagadh District Panchayat, Mr.Rathod for Director of Agriculture and Mrs.D.T.Shah for the workmen.

2 Special Civil Application No.12159 and 12160 of 1993 are filed by the District Agriculture Officer, Junagadh, seeking to challenge the common award by the Industrial Tribunal, at Rajkot, in Reference (ITR) No.267 of 1988 and 268 of 1988, dated 13th October 1992.

The first Reference, namely, 267 of 1988 seeks permanency to 9 workmen, namely, (1) Laxman Bhojabhai Kargadia, (2) Renmal Bhaya, (3) Dana Arjan, (4) Arjan Deva, (5) Natha Vallabhbhai, (6) Masriji Vaghji, (7) Rana Khima, (8) Ram Aga Jabu and (9) Petha Bhurabhai. The second reference seeks the similar benefits for one Prabhashakner Mansing Kalaiya. The submission of the workmen before the Tribunal was that they have put in 10 to 20 years of service and as per the circular of the Public Works Department of the State of Gujarat dated 17th October, 1988, a certain scheme with respect to regularization has been sanctioned by the State Government and in their view, they are entitled to similar benefits. These ten persons are working in the Seeds Farm run by the petitioner District Panchayat. Amongst others. It is the submission of the petitioner District Panchayat that the Industrial Tribunal had erred in holding that the work of development of seeds plant requires continuous process. It is their submission that these persons are seasonal in service and they cannot be given the benefits of the said resolution.

3. Special Civil Application No.5285 of 1994

is a counter petition on behalf of the same workmen, challenging the same award, since in their view, the Tribunal ought to have directed that they be made permanent after completion of one year of service, when they had completed 240 days of continuous work. The Tribunal had granted this benefit after completion of 10 years of continuous service and after working for 240 days for the purpose of Section 25-B of the Industrial Disputes Act, 1942, and those ten years to be found out as on 15.11.1988. The workmen are unhappy with this part of the award and, hence, they have filed the aforesaid Special Civil Application.

4. Special Civil Application No.9027 of 1994

is filed by the Director of Agriculture, who is an officer of the State Government, challenging the same award, in as much as, under an understanding arrived at between the State Government and the District Panchayat, as recorded in the State Government Resolution of 26th May 1971, in case the District Panchayat suffers losses, 50% of those losses are to be borne by the State Government. The State

Government apprehends that the burden of this award will come on it and, therefore, the State Government has filed the said Special Civil Application.

5. All these petitions raise important question of law and have, therefore, got to be admitted. Hence, Rule.

6. 'As far as the interim arrangement is concerned, Mr.P.M.Raval, learned senior Advocate for the District Panchayat with Mr.Munshaw, brought to my notice the State Government resolution dated 7th December, 1989 and submitted that, although the said resolution of the Agricultural Department is concerning some 197 employees, at the highest, the workmen concerned of the Seeds Farm could have been compared with those 197 employees and granted the benefits under that resolution and not under the Resolution dated 17.10.1988, which is of the Public Works Department'. Nothing prevented the District Panchayat from placing this relevant data before the Industrial Tribunal and the objection in this behalf of Mrs.Shah is well taken. Be that as it may, since the said resolution is brought to my notice, I cannot brush it aside and as an interim measure, it will be taken into consideration. The copy of the said resolution is tendered by Mr. Raval on record and is taken on record and marked as Annexure "X" .

7. The following are the effects of the award :-

(1) Those employees who have completed 10 years of service as on 15.11.1988, subject to completing 240 days as per Section 25-B of the Industrial Disputes Act, will be regularized on permanent basis:

(2) They will be paid such pay and allowances as are available and given to permanent employees posted and serving as Peons:

(3) On occurrence of vacancy in the set up, they will be absorbed without prejudice to the seniority of the employees as on 15.11.1988:

(4) Difference of pay and allowances that would be payable between 15.11.1988 and 31.03.1992 to be credited to the General Provident Fund Account or Conributory Provident Fund Account as the case may be:

(5) The arrears from 01.04.1992 onwards until the publication of the award to be paid within four months from the publication of the award:

(6) The tenure of service as from the date of joining until 15.11.1988 to be considered as notional service for pension and gratuity and like benefits; and

(7) Cost of Rs.2,000/-

This operative part of the award shall stand stayed till the hearing and disposal of the petitions. Instead of that, the following arrangement will run as an interim arrangement :-

(1) All the ten employees concerned will be fitted into the appropriate grade as per the Agricultural Department Resolution dated 7th December 1989;

(2) They shall be so fitted immediately and the salary or October 1994 shall be paid in accordance with the said fitment;

(3) The arrears of the employees concerned for the period 01.04.1992 onwards until the end of September 1994 will be calculated on the basis of the aforesaid circular dated 7th December 1989 by the end of November 1994. However, the Junagadh District Panchayat shall pay an amount of Rs.5,000/- when the salary for the month of October 1994 is paid, which shall be paid on or before 2nd November 1994. The said amount will be a part of the aforesaid amount of arrears. 50 percent of the remaining amount will be paid by the end of January 1995 and the

remaining amount by the end of March 1995;

(4) As far as the difference of pay and allowances that would be payable between 15.11.1988 and 31.03.1992 concerned, as referred in the award of the Tribunal, the District Panchayat shall calculate the amount as payable under the circular of 9th December 1989 and keep those calculations ready along with other calculations by the end of November 1994. they will also make both these calculations available to the advocate of the workmen. In the event the workmen succeed finally, they will be entitled to the said amount with interest which is presently not being directed to be credited to the General Provident Fund Account or Contributory Provident Fund Account; and

(5) As referred earlier, 50 percent losses suffered by the District Panchayat in the running of the Seed Farm are to be borne by the State Government. The District Panchayat will be at liberty to represent to the State Government to claim 50 percent of those amounts if they so deem it fit and the Government is expected to consider the representation expeditiously and in the true spirit of the arrangement and not raising any technicality. At the same time, the District Panchayat will not stop the payment to the workmen concerned on the ground that any such representation is pending with the Government.

8. The aforesaid order is being passed without prejudice to the right and contentions of all the parties. Liberty to the parties to apply in case there is any failure to comply or in case of difficulty.

9. The petitions to be placed for final hearing on 12th December 1994".

4. From the date of interim order dated 3rd October 1994, the respondents 10 workmen were working with the District Panchayat in Agriculture Farm and during the

pendency of this group of petitions, certain workmen were retired and therefore, could have the retirement benefits and other benefits flowing from the award. Some of the petitions are filed by the workmen, whose relief is based on the award passed by the Industrial Tribunal in question. The number of Special Civil Applications, Special Civil Application No.11941 of 2002, Special Civil Application No.50 of 1995, Special Civil Application No.8759 of 1999, Special Civil Application No.11947 of 2002, Special Civil Application No.2058 of 2000, Special Civil Application No.8758 of 1999, these are also pending matters alongwith this group of petitions, wherein certain benefits being claimed including the 5th Pay Commission and pensionary as well gratuity benefits from the District Panchayat. These petitions are also in group of these petitions and are decided by this Court in common judgment. In this group of matters also working workmen have filed these petitions. Learned advocate Mrs.D.T.Shah, appearing on behalf of the workmen and learned advocate Mr.H.S.Munshaw, appearing on behalf of District Panchayat and learned Assistant Government Pleader Mr.M.R.Mangday, appearing on behalf of Director of Agriculture Department.

5. Learned advocate Mr.H.S.Munshaw has raised contentions before this Court. First contention raised by learned advocate Mr.Munshaw is that they are not the owner of agriculture farm, but they are only maintaining the farm, means they are managing the affairs of agriculture farm. No doubt, he has made clear that concerned workmen were engaged by District Panchayat, Junagadh. He also submitted that it is not the liability of the District Panchayat, Junagadh, but in reality it is the liability of State of Gujarat. However, he also agree to that, because of Government Resolution dated 26th May 1971, the liability has been determined by the State of Gujarat and District Panchayat in respect to agriculture farm about 50:50%. That facts has been mentioned by this Court in its interim order. Mr.Munshaw also submitted that the Government resolution dated 17th October 1988 is not applicable to the workmen concerned. He also submitted that these are the seasonal workmen and not the permanent workmen. Thus, all workmen are of back door entry and not appointed after following due process of selection. He also submitted that there is no vacant post available in Agriculture Farm and therefore, Tribunal has committed error in passing such award. He also submitted that award passed by the Tribunal is bad, because State Government is not joined as party before the Tribunal. Therefore, he submitted that ultimately, it is a burden upon the State of Gujarat and not upon the

District Panchayat, Junagadh, because the District Panchayat, Junagadh is not an owner of agriculture farm. He also submitted that there are various types of farms, agriculture farm, seeds farm and seasonal farm. Therefore, he submitted that after the references have been referred for adjudication to the Tribunal by the State Government, detailed reply has been filed by the District Panchayat, Junagadh before the Tribunal and contention has been raised to the effect, which referred by the Tribunal in paragraph 7, page 14. The contention, which has been raised by District Panchayat before the Tribunal that there is no evidence produced by the workmen that they were on permanent posts against their work. District Panchayat has not recruited the workmen under the provisions of Gujarat Panchayat Act and Service Rules. There is no set up of permanent nature exists for these workmen and District Panchayat relied upon the decision of this Court reported 28(2) GLR, page 1308 and 1299. Relying upon these two decisions, District Panchayat has raised contention before the Tribunal that workmen were not entitled to be made permanent and similar to the District Panchayat, Junagadh, other Panchayats also run seeds farm, but nowhere employees are employed permanent and that such posts are not sanctioned by the Government. Mr.Munshaw has also raised an important question that whatever observations made by the Tribunal are not based upon any record. He also submitted that there is no clear cut finding based on legal evidence. He also submitted that there is no discussion by the Tribunal and therefore, according to him mere observation of the Tribunal is without base of any legal finding. The finding given by the Tribunal is perverse. He also raised contention that Agriculture Department is not an industry within the meaning of Section 2(J) of the Industrial Dispute Act, 1947. He also submitted that no permanent posts are available in agriculture farm and recruitment rules were not followed at the time of engagement of workmen. But, he admitted that workmen have been engaged by the District Panchayat and not by the State Government. He again emphasised that ultimately, burden is upon the State Government and not on District Panchayat. It is also important to note one admission of Mr.Munshaw before this Court in respect to two resolutions dated 17th October 1988 and another is 7th December 1989. He fairly submitted that both the Government resolutions are issued by different departments, but in respect to benefits available to the concerned workmen, practically both the Government resolutions are same. However, for the purpose of benefits accrued from the resolution, he made it clear that 7th December 1989 Government resolution is meant for

only 197 workmen and not meant for these workmen. He also relied upon the various decisions of this Court that an employee, which has been appointed through back door entry are not have to be regularized and therefore, he completed his submission to the effect that entire award is bad, illegal, finding given by the Tribunal is perverse and contrary to law and therefore, the same is required to be set aside. Except that as referred above, learned advocate Mr.Munshaw has not made any other submission.

6. Learned Assistant Government Pleader Mr.Mangday, appearing on behalf of Director of Agriculture Department, being respondent as well as petitioner in respect to Special Civil Application No.9027 of 1994 has adopted fully all the submissions made by learned advocate Mr.Munshaw, who is appearing on behalf of District Panchayat, Junagadh. Over and above, learned Assistant Government Pleader submitted that before the Tribunal State Government was not a party. Therefore, direction given by the Tribunal is not binding to the State of Gujarat. He also submitted that actual dispute, which was raised by the workmen is not for implementation of Government resolution dated 17th October 1988 and therefore, the direction, which has been ultimately given by the Tribunal is beyond the scope of terms of references referred for adjudication by the State Government. At this occasion one question was asked to the learned Assistant Government Pleader by the Court that whether Tribunal has given any direction against the State Government in the award in question, the answer is no.

7. Learned advocate Mrs.D.T.Shah, appearing on behalf of the respondent workmen has submitted that Industrial Tribunal has rightly passed an award and regularized the services of 10 workmen, those who put on at the relevant time some 10 to 30 continuous years of service. She submitted that alongwith the statement of claim, annexures have been produced before the Tribunal by the Union in that annexures name of the workman concerned in the reference, date of joining and total years of service put up by the workman has been specifically mentioned. These annexures or statements of the detail of the workman being a part of statement of claim. Therefore, she submitted that at the time of filing reply, the details, which has been placed on record by the Union being statement has not been disputed by the District Panchayat and therefore, it has been relied by the Tribunal rightly about the length of service and continuity of service of each workman. She

submitted that Agriculture Department is not an industry that contention was not raised by the District Panchayat, Junagadh before the Tribunal. She also emphasised that once the contention is not raised before the Tribunal, then it is not open to the District Panchayat to raise such contention before this Court first time. She also submitted that in entire award the Tribunal has given finding on the basis of the evidence on record and even on the basis of undisputed facts between the parties. She submitted that whatever the observation made by the Tribunal relying on record and undisputed facts must have to be prevailed rather than submissions made by the advocate concerned before this Court. She also submitted that the observation made by the Tribunal, if it is wrong, contrary to the record, then why at the relevant time District Panchayat has not approached to the Industrial Tribunal, Rajkot, pointing out the fact that the said observations are contrary to record. No such objections were raised, no such application was filed at the relevant time by the District Panchayat and now to raise dispute that being an after thought and therefore, Court cannot entertain such contention raised by District Panchayat, Junagadh. She also submitted that workman, whether it has been entered by back door entry or regular after all that back door entry was given by the department with open eyes. Why the department has kept the back door open so anyone can enter. Not only that, but back door entry has been maintained by atleast about 10 to 30 years by the District Panchayat and all of a sudden to raise contention about the back door entry cannot be entertained by this Court. She also submitted that these are the workmen, those who are working with agriculture farm in posts of peons and watchmen and not performing any kind of seasonal work. Therefore, they are permanent employees, working since 10 to 30 years with the District Panchayat, Junagadh and not getting proper salary and that is how the Industrial dispute has been raised by the Union on behalf of the workmen. She also submitted that Industrial Tribunal under the provision of Industrial Dispute Act, 1947 having very vide jurisdiction. Even Tribunal can change the existing condition of service and even impose new condition of service for that limits of Civil Court is not applicable to the Industrial Tribunal. She also submitted that really Industrial Tribunals are of trapping of Court and really since those are not the Civil Court therefore, they can change the condition of service, even impose a new condition of service. Therefore, Tribunal has rightly passed an order, granting the benefits in favour of the workmen for that Tribunal has not committed any error and therefore, having this Court limited

jurisdiction according to her submission, this Court may not interfere with the award passed by the Tribunal.

8. I have considered the submissions made by all the three learned advocates. It is necessary to note certain observations, which has been made by the Tribunal while passing award, which is as under :-

"6. Based on the evidence on record, learned counsel Shri Dave urged that all the workers have been doing the work of same nature as permanent workers are doing since they have been working for last more than 10 to 30 years on principle of equal pay for equal work, they must be conferred right of being made permanent.

8. The evidence on record reveals that these workers have been working on such farm which are run by Jilla Panchayat, and there is as a matter of fact no denial of the fact that these workers have been working, since last more than 10 to 30 years and that they have been attending cultivation, weeding, cutting and channelizing water etc, and working as watchmen.

11. By statutory industrial law, no provision is made for creation of permanency, though by following certain procedure and conferring benefits compatible with social justice, protection is rendered to worker, on continuity of service for 240 days or more, statutory protection is given in the nature of restrain, on removal or retrenchment. With it, right for equal pay for equal work is modulated to security of permanency of tenure as laid down in the case of Daily rated Casual Labour Employees Union P&T Dept. Vs. Union of India, 1986, S.C.C., 637 and the Dharwar District P.W.D. Literate Daily wages Employees Asso. Vs. State of Kerala, AIR, 1990 (SC) 883 and followed by our High Court in case of C.D.Chauhan Vs. Reserve Bank of India, XXXII GLR, 1192. When the plea of the present workers is considered on the basis of oral evidence since it is proved and undisputed fact that they have been service continuously for more than 10 to 30 years, and who have been performing same duties as other permanent employees, who work as peon or chowkidars and like, it is just to conclude that they have acquired a right of permanency and be conferred.

13. I am conscious of the decision of the Supreme Court in the case of Delhi Development Horticulture Employees Union Vs. Delhi Administration, AIR, 1992(SC) 789. It may firstly be stated that the aforesaid two judgments of Supreme Court regarding regularization and right of equal pay for equal work still stand good law, which have been followed as Rule of law in the aforesaid case of C.D.Chauhan (Supra). It is true that the Supreme Court and so followed by our own High Court in the case of Dinesh S.Parmar V/s. State 33 GLR 608, has desired that the Courts do take Judicial notice and caution that by circumventing the provision of law, employment is given by mode other than that employment exchange, and that it be checked and stopped, the case of the present workers in fact, falls on different footing, since these workers had been given employment almost ten to fifteen years back when the first party is not pleaded or proved or said to have adopted practice of employing persons, through employment exchange, or even by advertising such posts also. As a matter of fact, if the regularization is now to be denied these workers, who have given ten to fifteen years service, only because they have personally not come through employment exchange, it would, in fact, be like throwing persons in the midstream off the boat only because the ticket holder passengers at the bank are waiting for their boat on the shore. These workers are absolutely illiterate rural workers, and even if some favours, here and there, generally was made to give employment about fifteen years back, to deny them now the regularization, would amount to putting them in lurch, since they have reached an age when they cannot go for any other employment and would be forced to work for petty pittance as daily workers for rest of the life for no fault of theirs. The fact that the setup of the first party does not provide for such post is only a lame excuse and that responsibility of any erring inductment in employment would rest on the Officers of the concerned persons of the department for which penalty whereof cannot be imposed on these labourers.

14. The fixation of date is significant and relevant, since it involves consequential financial liability on the first party. Mr.Dave

has relied on the decision of the Industrial Tribunal at Ahmedabad in case of Gujarat University, Ahmedabad V/s. Workmen employed under reported in G.G.G. Part IL, dated 30.9.82 in Ref (IT) No. 475/81, wherein considering various judgments Tribunal held that permanency be considered on completion of three years or completion of 720 days. Though neither relied nor referred, this Tribunal takes notice of the fact that the State of Gujarat in dealing with the question of regularizing daily wage workers had appointed a Committee headed by the then Hon'ble Minister Shri Daulatbhai Parmar and the Government by resolution had accepted recommendations of the Committee which suggested that those workers who had completed ten years of service be made permanent as from 1.10.88 and by resolution those who had completed 15 years service were granted even wage increment, and the period of entry prior to the date of permanency was considered for the purpose of pension, gratuity and other likes. As I said earlier, neither referred nor relied, still that decision of the Government with reference to conferment of social justice and benefits, it is relevant and is indeed most just, reasonable and equitable. Considering all the circumstances and the nature of work and employment, in the present case this Tribunal feels that permanency be confirmed. The present reference has been filed on 15.11.88 and therefore, it will be just to hold that those employees, who have already completed more than 10 years service on that day be made permanent from 15.11.88 and be conferred pay and allowances and other benefits as payable to the permanent employees who are employed as Peons. Tenure from first entry of service till 15.11.88 be considered as notional period of service as of permanent nature. I therefore, pass following order :

References are allowed and it is hereby directed that in conformity with the Government of Gujarat, Department of Bldg. & Roads, Resolution No. WD/E/1588/5/1/B-B dated 17.10.88, services of such workers who as from date of first entry completed continuous service of 240 days as per provision of section 25B of the Industrial Dispute Act, and have completed 10 years of such service as on 15.11.88 be regularized, on permanent basis, and from that

date be paid all such pay and allowances and other benefits as are available and given to permanent employees posted and serving as peons, and it is further directed that on occurrence of vacancy in the setup, they be absorbed without prejudice to seniority of any employee as on 15.11.88 with further direction that difference of pay and allowances that would be payable between 15.11.88 to 31.3.92 be credited to the General Provident Fund Account or contributory Provident Fund Account as the case may be. Arrears from 1.4.92 onwards until publication of the award be paid within four months after publication of the award.

It is further directed that tenure of service as from the date of joining until 15.11.88 would be considered as notional service for the purpose of pension and gratuity benefits and like, if any.

First party shall pay cost of Rs.2000/- (Rupees two thousand only) as costs of these references to the union representing the workers".

9. It is necessary, normally Court may not quoted the observations made by the Tribunal, but it is important to quote the observations made by the Tribunal, which has been relied by the Tribunal and on that findings, the award has been passed by the Tribunal. From the above-referred observations in paragraph 8 it is specifically observed by the Tribunal that :

"8. evidence on record reveals that these workers have been working on such farm which are run by Jilla Panchayat, and there is, as a matter of fact no denial of the fact that these workers have been working since last more than 10 to 30 years and that they have been attending cultivation, weeding, cutting and channelizing water etc. and working as watchmen".

Similarly, in paragraph 11, the observation made by the Tribunal that :

"when the plea of the present workers is considered on the basis of oral evidence since it is proved and undisputed fact that they have been service continuously for more than 10 to 30 years, and who have been performing same duties

as other permanent employees, who work as peon or chowkidars and like, it is just to conclude that they have acquired a right of permanency and be conferred".

The further observation made by the Tribunal in paragraph 13 that :

"The case of the present workers in fact, falls on different footing, since these workers had been given employment almost ten to fifteen years back when the first party is not pleaded or proved or said to have adopted practice of employing persons, through employment exchange, or even by advertising such posts also".

10. The above observations made it clear two aspects that length of service of the each workmen is not disputed by the District Panchayat, Junagadh before the Tribunal and another, continuity of the service of the workmen is not disputed by the District Panchayat, Junagadh. All these things now disputed by Mr.Munshaw before this Court, doubting the observations of the Tribunal to the extent that there is no discussion, no reasoning, no legal evidence before the Tribunal and such observations has been made in support of his submissions, no documents has been produced by Mr.Munshaw before this Court, no facts to that effect has been filed, contrary to the observations of the Tribunal, except oral submission, no any further efforts have been made by the learned advocate Mr.Munshaw. Therefore, considering this approach of learned advocate Mr.Munshaw, I am considering one decision of the Apex Court in the case of State of Maharashtra Vs. Ramdas Shrinivas Nayak & Anr., reported in AIT 1982 SC 1249, the relevant observation made by the Apex Court is as under:-

"Held that the Judge's record was conclusive. Neither lawyer nor litigant may claim to contradict it, except before the Judge himself, but nowhere else. The Court could not launch into inquiry as to what transpired in the High Court".

So, "Judges record is conclusive. Neither lawyer not litigant may claim to contradict it, except before the Judge himself, but nowhere else".

In light of this conclusion, the very relevant observation, which has been highlighted by the Apex Court considering the English decision at paragraph 4, which is also relevant according to my opinion and therefore, it

is quoted as under:

> "The Court is bound to accept the statement of the Judges recorded in their judgment, as to what transpired in Court. It cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Or course, a party may resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment".

11. So in light of the above observations made by the Apex Court in paragraph 4-7 as quoted above, the submission made by Mr.Munshaw against the observations made by the Tribunal, which seems to be having some contradictory submissions, which cannot be accepted by this Court and this Court is accepting the observations made by the Tribunal. Tribunal is a Court and conclusive so far relying upon the undisputed facts and admissions of District Panchayat, Junagadh. Therefore, this Court is not going into the controversy, which has been raised by Mr.Munshaw before this Court above challenging the findings of the Industrial Tribunal. Therefore, the contention of Mr.Munshaw is rejected.

12. Now only question arises about the Agriculture Department is not an industry. This contention not raised in the written statement because written statement is on record and it is not raised before the Tribunal, no oral evidence has been lead before the Tribunal to

support and substantiate the said contention before the Tribunal. It is also necessary to note that even, no such contention raised by the District Panchayat, Junagadh in its petition also, but I do not know it occurred in the mind of Mr.Munshaw when he argued the matter before this Court, because he submitted that it is a legal issue which requires to be examined by this Court. It is settled law on this point that when no such contention has been raised by the party before the Trial Court or before the Lower Court, then first time such contention cannot be entertained, which can be raised before the Higher Forum. Those aspects has been examined recently by the Apex Court in case of Krishi Utpadan Mandi Samiti through its Secretary, Anand Nagar Vs. Arvind Chaubey and another reported in 2003 I, LLJ, page 507. The Apex Court has observed that:

"The appellant-Samiti impugned in this appeal the concurrent verdict against it, by the Industrial Tribunal and the High Court, in the dispute raised by the respondent workman. It raised a plea that it was not an 'industry' under the U.P. Industrial Dispute Act, 1947. The Supreme Court observed that once the appellant did not raise such a contention before the Industrial Tribunal, it was not available to be canvased higher up".

The relevant discussion in paragraph 2 is quoted as under:

"Learned senior counsel for the appellant contended that the appellant Mandi Samiti is not an 'industry' governed by the provisions of the U.P. Industrial Dispute Act, 1947. The High Court has held against the appellant on the ground that such a contention was not canvassed before the Industrial Tribunal and also following an earlier decision of another Bench, the High Court dismissed the writ petition. Once the appellant did not raise such a contention before the Industrial Tribunal, it was not available to be canvassed higher up".

13 Therefore, once the contention of industry not raised before the Industrial Tribunal, such contention first time cannot be allowed to be raised by the District Panchayat, Junagadh. At this stage I am referring one aspect and I fail to understand how this contention has been raised by Mr.Munshaw, who is not representing the Director of Agriculture. It is also necessary to note that it is not the contention of Mr.Munshaw that District

Panchayat is not an industry under Section 2(J) of the Industrial Dispute Act, 1947. Therefore, otherwise also according to my opinion, such contention is irrelevant to the facts of this matter and therefore, also it is rejected.

14. Now in respect to two GRs first is of R&B Department and another is of Agriculture Department. The Industrial Tribunal has relied upon the Government resolution of R&B Department dated 17th October 1988 and Mr.Munshaw relied upon the Government resolution dated 7th December 1989, but he specifically emphasised that it was meant for only 197 employees and not for others. At this juncture, it is necessary to atleast refer the submission of learned senior advocate made at the time of passing the interim order by this Court. The relevant paragraph is as under:

> "6. As far as the interim arrangement is concerned, Mr.P.M.Raval, learned Senior advocate for the District Panchayat with Mr.Munshaw, brought to my notice the State Government Resolution dated 7th December 1989 and submitted that, although the said resolution of the Agricultural Department is concerning some 197 employees, at the highest, the workmen concerned of the seeds farm could have been compared with those 197 employees and granted the benefits under that resolution and not under the Resolution dated 17.10.1988, which is of the Public Works Department".

This submission is clear admission on the part of the District Panchayat that 7th December 1989 resolution is applicable to the workmen at par with 197 employees and benefits can be extended in their favour. It is also important to note at this stage that practically Mr.Munshaw has admitted that for granting the benefits or availability of the benefits to the workmen, there is no such difference between two Government resolutions of dated 17th October 1988 and 7th December 1989, except that it meant for 197 employees. Therefore, considering this part, according to my opinion Tribunal has not committed any error while passing the award granting benefits under Government resolution dated 17th October 1988. State Government having various departments and various departments may issue various Government resolutions, but ultimately it is not binding to Industrial Tribunal. Tribunal can consider each Government resolution and if thought it fit, the Tribunal can direct to the petitioner to grant the benefit to the

concerned workmen under particular Government resolution. So Tribunal is not bound by resolution of other various departments and limits of their departments. The Tribunal has to consider as a whole which Government resolution is beneficiary to the workmen and therefore, Tribunal has rightly granted the benefit under Government resolution dated 17th October 1988.

15. According to the submission made by Mr.Munshaw, in reality, except the different departments for getting the benefit so far respect to the workmen, there is no such difference between two Government resolutions. Both are equally benefited to the workmen, either working in the R&B Department or working in the Agricultural Department. It is necessary to note one aspect that District Panchayat, Junagadh is also covered by Government resolution dated 17th October 1988. In preamble it is clearly mentioned that Panchayat is also included in the said resolution dated 17th October 1988. Apart from that fact, Industrial Tribunal while adjudicating the references not bound by any limitations or prescribed service rules. Tribunal can vary, contract or change the service condition, if it is not suitable or proper, reasonable and benefited to the workmen. This aspect has been examined by Division Bench of this Court in reported decision in the case of Kalol Municipality & Anr. Vs. Shantaben Kalidas & Ors. reported in 1993 (2) GLR, page 997 the relevant observation made by the Division Bench is as udner:

"The direction that may be given by the Labour Court or the Tribunal while deciding an industrial dispute may enable the Municipality to amend the Rules framed by it under Sec.271 of the Gujarat Municipalities Act. But if there is no provision in the Rules or that the permanent set up fixed by the Municipality is already determined and the same is limited it cannot be set up as a defence by the Municipality that the Labour Court or the Industrial Tribunal cannot give direction which is not in conformity with the Rules framed by it. The Rules framed by the Municipality are unilaterally framed without involving the workmen employed by it. Thus unilateral determination of the number of staff by the municipality cannot bind the workmen engaged by it. Such unilateral decision about the number of staff cannot truncate the powers of the Labour Court or that of the Industrial Tribunal to adjudicate the dispute referred to it in accordance with the provisions of the Act.

In the case of Natvarlal V.Patel Vs. Municipality of Vadodara reported in (1965) VI GLR 189, the question arose as to whether the settlement arrived at between the workmen and the Municipality in conciliation proceedings would be binding upon the Municipality or not. It was contended that unless Sec.46(a) of the Bombay District Municipal Act, 1901 it would not be binding to the Municipality, in as much as the settlement altered the existing rules (Sec. 46(a) of the Bombay District Municipal Act, 1901 was analogous to Sec.271 of the Municipal Act). Negativing the contention the Division Bench observed that the Municipal Act does not deal with the sphere of Industrial dispute which is occupied by the I.D. Act. Initially when the first contract of employment was made or the initial rules were made the matter would be governed by the Municipal Act. After the workmen raised industrial dispute for changing their existing conditions of employment, the matter would be entirely governed by the I.D. Act which provides for settlement of industrial disputes by changing, modifying or altering the existing conditions of service whether under a contract or under a rule. Once the dispute is raised, the matter would be governed by the Industrial law. Thereafter, the Division Bench has observed as follows :

"The two fields are thus totally distinct and the two Acts operate in different fields. The Labour Court was, therefore, obviously in error in coming to the conclusion that when an industrial settlement was arrived at, what was sought to be done was an alteration of the Municipal Rules. Whether the settlement was arrived at was required by law will have to be examined only from the provisions of the Act and not by recourse to Sec.46 of the Municipal Act which deals with alteration of Municipal Rules and which does not deal with any industrial dispute."

16. Similarly, this aspect also examined by the Andrapradesh High Court in reported decision in the case of Indian Bank Association Vs. Workmen of Syndicate Bank & Ors., reported in 1998 (1) LLJ, page 233, wherein

relevant part is quoted as under:

"The substantial objection of the petitioner to the impugned award was that the respondents (who were deposit collectors) could not be characterized as workmen and there could be no regularization of their services in the Bank in view of the prohibition in Sec.10(1) (b)(ii) of the Banking Regulation Act, 1949. The Court, while holding that the respondents were not entitled to be absorbed as regular staff of the Banks, (as was fairly conceded by the counsel for respondents) went into the question whether the respondents (deposit collectors) were workmen of the Banks and, if so, to what relief they were entitled. After a survey of the decisions on the point, and the principles laid down by the Apex Court to find out whether the engagement of a person was as a workman or not, the Court reached the conclusion that the Deposit Collectors were workmen of the Banks.

The next question of the reference being bad as in the guise of a reference the respondents were claiming modification of the terms of the agreement is also misconceived. It is well known, as a part of the jurisprudence applicable to the Industrial law, that Industrial Tribunals are vested with the jurisdiction of also modifying the contract of service and in the process may entitle the workmen to better rights and facilities. The question was considered by the Apex Court in Co-operative Central Bank Limited Vs. Additional Industrial Tribunal, A.P. AIR 1970 SC 245 with the observation: "The jurisdiction which is granted to Industrial Tribunal by the Industrial Disputes Act is not the jurisdiction of merely administering the existing laws and enforcing existing contracts. Industrial Tribunals have the right even to vary contracts of service between the employer and the employees which jurisdiction can never be exercised by a civil court or a Registrar acting under the Co-operative Societies Act, so that the circumstance that, in granting relief on issue No.1, the Tribunal will have to vary the special byelaws framed by the Co-operative Bank does not lead to the inference that the Tribunal would be incompetent to grant the reliefs sought in this reference. In fact, the reliefs could only be granted by the Industrial Tribunal and could not

fall within the scope of the powers of the Registrar dealing with a dispute under Section 61 of the Act".

17. Therefore, considering the two decisions as referred above and also considering the scheme of Industrial Dispute Act, 1947, the Tribunal is entitled to pass appropriate orders in respect to the condition of service of concerned workmen and also competent to pass award granting regularization or permanency or benefit of permanency in favour of workmen. For that, according to my opinion, Tribunal has not committed any error, which requires any interference by this Court. At this stage it is necessary to note one aspect in paragraph 9 of the award, Tribunal has also examined question of pension and whether Panchayat is an industry or not or seeds farm of Agricultural Department of Jilla Panchayat is an industry or not under Section 2(J) of the Industrial Dispute Act, 1947. That this question was not raised by the petitioner before the Industrial Tribunal, but eventhough, Tribunal has considered this question also, given proper answer and reasons in support of its conclusion. Tribunal has considered various activities carried out in agriculture farm and also the produces arrived from the farms and also entire process of production of seeds, vegetables, which has been considered by the Industrial Tribunal and come to the conclusion that seeds farm of Agricultural Department of Jilla Panchayat is an industry within the meaning of Section 2(J) of the Industrial Dispute Act, 1947. Therefore, on both the aspects, once the Tribunal has already examined the question and even it was not specifically raised by the petitioner before the Industrial Tribunal. Therefore, this Court cannot go into the question again, once it was not specifically raised by the petitioner before the Industrial Tribunal. Apart from that, there is clear finding of the Tribunal that seeds farm of Agricultural Department of Jilla Panchayat is a industry that is also legal and valid because no contradictory evidence produced by the petitioner before the Tribunal.

18. The contention raised by Mr.Munshaw that it is not a liability of the District Panchayat, but it is a State liability. On behalf of Director of Agriculture, represented by learned Assistant Government Pleader Mr.M.R.Mangday raised the same question, which is contrary to Mr.Munshaw that it is not a State liability, but it a liability of the District Panchayat. The contention of Mr.Mangday is also there that before the

Industrial Tribunal they are not joined as party and therefore, State is not liable to bear any expenses, which has been derived from the award in question. I have considered the contention of Mr.Munshaw as well as learned Assistant Government Pleader Mr.Mangday. The facts of this case are very clear that agriculture farm, no doubt belongs to State Government, but it was given to the District Panchayat for management and maintaining such farm, meaning thereby that, entire affairs of engaging the workmen to maintain the same is a burden and liability upon the District Panchayat. Accordingly, Mr.Munshaw also admitted before this Court that these workmen were also engaged by District Panchayat and not by the State Government could have bifurcation about the expenses. One Government resolution has been referred dated 26th May 1971 in interim order by this Court as well as it is also produced by Director of Agriculture in their petition, where profit and loss of seeds farm must have to be parted equally 50:50% between the State and District Panchayat, meaning thereby that whatever the benefits or income available or whatever loss occurred between District Panchayat and State Government, it should have to be bifurcated by 50:50%. The contention of learned Assistant Government Pleader Mr.Mangday that State Government was not joined as party in reference. According to my opinion, there is no need to be joined as a party to State Government, simply because workmen have been engaged by District Panchayat and not by the State Government. Workmen are not the employees of the State Government, they are only the employees of the District Panchayat. Secondly, that workmen have also claimed relief against the District Panchayat and not against the State Government. These are the two reasons very clear and that is why State Government has rightly not joined as party in the reference proceedings. In light of these facts, considering the directions issued by the Industrial Tribunal, it is also against the District Panchayat, Junagadh, not against the State Government. Therefore, naturally workmen cannot enforce the award against the State Government. However, this is a legal fight between the State and District Panchayat, Junagadh. Both are the State. Workers have nothing to worry about their internal fight. Workmen want their right to be given by employer, either it may be an internal arrangement between the State and District Panchayat, Junagadh, but workmen must enforce award against the District Panchayat, Junagadh and result thereto, if ultimately according to their internal arrangement, if State Government is required to bear any burden or liability, then the State must have to satisfy such liability. At this juncture, principle, which has been

developed by the Apex Court: 'who is the real employer, who is responsible for giving benefit to the workmen'. If suppose, District Panchayat, Junagadh may not able to pay benefit to the workmen as per the award, then can it be possible that workmen remained without benefit. Because the District Panchayat, Junagadh is not able to make payment. In such circumstances, now Court has to lifted the corporate veil and to see beyond the curtail that actually who is liable. This aspect has been examined by the Apex Court recently in case of Kapila Hingorani Vs. State of Bihar, reported in 2003 (4), Supreme Court, page 1. The Apex Court has observed that the Sate cannot escape its liability when a human rights problem of such magnitude involving the starvation deaths and/or suicide by the employees has taken place by reason of nonpayment of salary to the employees of Public Sector Undertaking for such a long time. Therefore, as and when Article 21 apply, right to life including livelihood and if it is adversely affected by any such authority, then it is a vicarious liability of the State to satisfy such liability and protect the fundamental right of workmen under Article 21 of the Constitution of India. Similarly, State is not the party in the reference, but ultimately, initial burden is upon the District Panchayat, Junagadh to implement the award in question, but in case if there are circumstances, adverse, then it is also equally a burden upon the State to satisfy an award and to get amount by initial arrangement from the District Panchayat, Junagadh. Though, before this Court it is not the case of the District Panchayat, Junagadh to the extent that their financial position is weak and they are unable to satisfy the liability derived from the award in question, but apart from that at this juncture, view taken by the Apex Court is very relevant and important and therefore, I am referring the said observations as under :

"25. It is now well-settled that the corporate veil can in certain situations be pierced or lifted. The principles behind the doctrine is a changing concept and it is expanding its horizon as was held in the State of U.P. and Others vs. Renusagar Power Company & Others [(1988) 4 SCC 59]. The ratio of the said decision clearly suggests that whenever a corporate entity is abused for an unjust and inequitable purpose, the court would not hesitate to lift the veil and took into the realities so as to identify the persons who are guilty and liable therefor.

26. xx xx

27. The corporate veil indisputably can be pierced when the corporate personality is found to be opposed to justice, convenience and interest of the revenue or workman or against public interest. [See C.I.T., Madras vs. The Meenakshi Mills Ltd. & Ors. [(1967) 1 SCR 934]; Workmen Employed in Assn. Ruber Industry Ltd., Bhavnagar vs. Associated Rubber Industry Ltd., Bhavnagar & Another, [(1985) 4 SCC 11]; New Horizons Ltd & Another vs. Union of India and Others [(1995) 1 SCC 478]; State of U.P. and Others vs. Renusagar Power Co. and Others [(1988) 4 SCC 59]; Hussainbhai, Calicut vs. The Alath Factory Thezhilali Union, Kozhikode and Others [(1978) 4 SCC257]; and Secretary H.S.E.B. vs. Suresh and Others, [(1999) 3 SCC 601].

28 to 61 : xx xx

62. The matter may be considered from another angle. While the State expects the industrial houses and multi-national companies to take such measures which would provide a decent life to the persons living in the society in general and to their employees in particular and in that premise it is too much to ask the State to practise what it preaches? This gives rise to another question. Can the State be so insensitive to the plight of its own citizens in general and the employee of the public sector undertakings in particular?

63. The court in a situation of this nature is obligated to issue necessary directions to mitigate the extreme hardship of the employees involving violation of human rights of the citizens of India at the hands of the State of Bihar and the Government companies and corporations fully owned or controlled by it. A right to carry on business is subject to compliance of constitutional obligations as also limitations provided for in the Constitution.

64. Financial stringency may not be a ground for not issuing requisite directions when a question of violation of fundamental right arises. This court has been highlighting this aspect in the matters concerning fundamental rights and maintenance of ecology. [See Rural

Litigation and Entitlement Kendra and others Vs. State of Uttar Pradesh and Others AIR 1987 SC 359 = (1986) Supp. SCC 517, Municipal Council, Ratlam - (1980) 4 SCC 162 and B.L. Wadhera vs. Union of India - AIR 1996 SC 2969]. In All Indian Imam Organization and Others vs. Union of India and Others [(1993) 3 SCC 584], this Court held:

"6. ...Much was argued on behalf of the Union and the Wakh Boards that their financial position was not such that they can meet the obligations of paying the Imams as they are being paid in the State of Punjab. It was also urged that the number of mosques is so large that it would entail heavy expenditure which the Boards of different States would not be able to bear. We do not find any correlation between the two. Financial difficulties of the institution cannot be above fundamental right of a citizen. If the Boards have been entrusted with the responsibility of supervising and administering the Wakf then it is their duty to harness resources to pay those persons who perform the most important duty namely of leading community prayer in a mosque the very purpose for which it is created."

69. The State must thank itself for having placed itself in such a state of affairs. If at an appropriate stage, having regard to its right of deep and pervasive control over the Public Sector Undertakings it had properly supervised the functioning of the Government Companies and take necessary steps to refer the sick companies to BIFR in terms of the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, the position might have been different. It even failed to take any positive action even after coming to know the starvation deaths and immense human sufferings.

73. We, however, hasten to add that we do not intend to lay down a law, as at present advised, that the State is directly or vicariously liable to pay salaries/remunerations of the employees of the public section undertakings or the Government companies in all situations. We, as explained

> hereinbefore, only say that the Sate cannot escape its liability when a human rights problem of such magnitude involving the starvation deaths and/or suicide by the employees has taken place by reason of nonpayment of salary to the employees of Public Sector Undertaking for such a long time. We are not issuing any direction as against the State of Jharkhand as no step had admittedly been taken by the Central Government in terms and furthermore as only four public sector undertakings have been transferred to the State of Jharkhand in respect whereof the petitioner does not make any grievance."

19. In view of the above observations and considering the submission of learned Assistant Government Pleader, Mr.Mangday and learned advocate Mr.Munshaw, the contention by Mr.Mangday cannot be accepted and as challenged by the Director of Agriculture against the vary award is also cannot be entertained by this Court.

20. One another contention raised by learned Assistant Government Pleader Mr.Mangday that workmens' demand is to make them permanent, but not relying to Government resolution dated 17th October 1988 and no such reference is made by the State Government. Therefore, Tribunal has travelled beyond the scope of terms of reference. This contention also cannot be accepted, simply on the ground that the Tribunal can understand the reference and exact demand of the workmen. In facts of this case, Tribunal has not travelled beyond the scope of terms of reference, because the demand of permanency has been referred for adjudication and the Tribunal has relied upon the Government resolution dated 17th October 1988. It is for the Tribunal to decide which formate can be apply for giving benefit of permanency. This being a proper formate found by the Tribunal and therefore, same has been made applicable under the provisions of the Industrial Dispute Act, 1947. Section 10(4) giving power to the Tribunal to decide the main dispute which is referred for adjudication and also different matters incidental thereto. This being a matter incidental thereto, the main reference and therefore the Tribunal has rightly considered the Government resolution dated 17th October 1988 and rightly passed an award granting benefit to the workmen under Government resolution dated 17th October 1988.

21. It is relevant to consider one decision of Apex Court, wherein the Apex Court has also followed the same criteria granting benefit of permanency in favour of

workmen. The contentions about back door entry, not following proper procedure for recruitment are not relevant, because the workman, who has continuously worked with the employer and for pretty long time for 10 to 30 years, then at the occasion now to terminate the services or not to regularized the concerned workmen is being arbitrary and untenable practice. The view taken by the Apex Court that if suppose the workman is not appointed as per the rules or calling names from Employment Exchange, also entitled to have statutory protection under the provisions of Industrial Dispute Act, 1947. In reported decision in the case of Vikramaditya Pandey Vs. Industrial Tribunal & Anr., reported in 2001, AIR, Supreme Court Weekly, page 310, the similar aspect has been considered, that by putting the number of years service, continuous with the employer, then it becomes immaterial whether he is qualified as per the service rules or not. His length of service itself being good experience of the post in question or work in nature and therefore he has satisfied the requirement, merely he worked continuously with employer for more than 10 years. The relevant observation made in para (6) is quoted as under :-

"By plain reading of the said Regulation it is clear that in case on inconsistency between the Regulation and the provisions of the Industrial Disputes Act, 1947, the State Act, the Workmen's Compensation Act, 1923 and any other labour laws for the time being in force, if applicable to any co-operative society or class of co-operative societies, to that extent Regulations shall be deemed to be inoperative. In other words, the inconsistent provisions contained in the Regulations shall be inoperative, not the provisions of the other statutes mentioned in the Regulation 103. The Tribunal in this regard correctly understood the Regulation by wrongly refused the relief on the ground that no reinstatement can be ordered on a regular employment in view of the provisions contained in the said Resolution. But the High Court read the Regulation otherwise and plainly misunderstood in saying that if there is any inconsistency between the Regulations and the Industrial Disputes Act, 1947 and other labour laws for the time being in force the Regulations will prevail and the Industrial Dispute Act, 1947 and other labour laws shall be deemed to be inoperative. This misreading and wrong approach of the High Court resulted in wrong conclusion. In the view it

took as to Regulation 103 the High Court proceeded to State that even if there was retrenchment in view of the Regulations 5 of the Regulations the Labour Court was not recruited in terms of Regulation 5 because the Labour Court had to act within the ambit of law having regard to the Regulations by which the workman was governed. In this view the High Court declined relief to the appellant which in our view cannot be sustained. The Tribunal felt difficulty in ordering reinstatement as the appellant ought to have been ordered to be reinstated in service once it was found that his services were illegally terminated in the post he was holding including its nature. Thus in our opinion both the Tribunal as well as the High Court were not right and justified on facts and in law in refusing the relief of back wages. But, however, having regard to the facts and circumstances of the case and taking note of the fact that the order of termination dates back to 19-7-1985 we think it just and appropriate in the interest of justice to grant back wages only to the extent of 50%".

This aspect has also been examined by the Apex Court in case of Gujarat Agricultural University Vs. Rathod Labhu Bechar & Ors., reported in 2001, AIR, Supreme Court, page 706. The relevant observations made in paragraphs 26, 27 and 28 are quoted as under :

"26 In the light of the aforesaid decisions, we now proceed to examine the proposed scheme. Under Clause I it is proposed that all daily wage workers, whether skilled, semi-skilled or unskilled who have completed 10 years or more of continuous service with a minimum of 240 days in each calendar year as on 31 December 1999 is to be regularized and be put in the time scale of pay applicable to the corresponding lowest grade in the University. However, the said regularization is subject to some conditions. Under Clause 1(a) such employee is eligible only if he possesses the prescribed qualifications for the post at the time of their appointment. The strong objection has been raised to this eligibility clause. The submission is, those working for a period of 10 or more years without any complaint is by itself a sufficient requisite qualification and any other rider on the facts of this case would prejudice these workers. We find

merit in this submission. We have perused the qualifications referred in the aforesaid recruitment rules according to which, qualification for peon is that he should study upto 8th Standard for operator cum mechanic should have diploma in mechanic having sufficient knowledge of vehicle repairing experience if automobiles or tractors dealers workshop for 2 years, for Chowkidar, he must be literate and have good physique. Literate is not defined. For Plumber to have I.T.I. Certificate.

We feel that daily rate workers who have been working on the aforesaid posts for such a long number of years without complaint on these posts is a ground by itself for the relaxation of the aforesaid eligibility condition. It would not be appropriate to disqualify them on this ground for their absorption, hence Clause 1(a), need modification to this effect.

27: In Bhagawati Prasad Vs. Delhi State Mineral Development Corporation, 1990 (1) SCC 361: (AIR 1990 SC 371: Lab IC 126), this Court observed (para 6 of AIR and Lab IC):

"The main controversy centres round the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them: the indisputable facts are that the petitioners were appointed between the period 1983 and 1986 ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the post held by them. Practical experience would always aid the person to effectively discharge the duties and it is sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the

respective posts on the ground that they lack the prescribed educational qualifications."

28: Thus in view of their long experience on the fact of this case, and for the concerned posts the prescribed qualification, if any, should not come in the way of their regularization. Clause 1(b) provides for the regularization of daily wagers in a phased manner to the extent of available sanctioned post."

22. In view of above observations and considering the various decisions of the Apex Court as well as this Court and considering the findings given the Tribunal and also considering the admission of the petitioner as well as undisputed facts on record, according to my opinion, Tribunal has rightly decided the references within its jurisdiction and for that Tribunal has not committed any error which is apparent on the face of record. The finding is based upon the evidence, nor perverse and baseless. The reasons have been given by the Tribunal with application of mind and therefore, according to my opinion, there is no error committed by the Tribunal, which requires any interference by this Court while exercising power under Article 227 of the Constitution of India. However, this Court having very limited power under Article 227 of the Constitution of India, the Apex Court has considered the scope of Article 226 and 227 of the Constitution of India in case of OUSEPH MATHAI AND OTHER V. M. ABDUL KHADIR reported in 2002 [1] SCC 319. The relevant observations in para 4 & 5 are quoted as under :-

"4. It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said article as a matter of right. In fact power under this article casts a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring

powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

5. In Warayam Singh v. Amarnath this Court held that power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. This position of law was reiterated in Nagendra Nath Bora v. Commr. of Hills Division & Appeals. In Babhutmal Raichand Oswal v. Laxmibai T. Tarte this Court held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. After referring to the judgment of Lord Denning in R. V. Northumberland Compensation Appeal Tribunal, ex p Shaw [All ER at p.128] This Court in Chadavarkar Sita Ratna Rao v. Ashalata S. Guram held : [SCC pg.460, para 20]

"20. It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of the fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a findings are perverse and not based on any material evidence or it resulted in manifest injustice [see Trimbak Gangadhar Telang]. Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon

appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indiction of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limit of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error."

The Apex Court has also considered the scope of Article 226 and 227 of the Constitution in case of ROSHAN DEEN VS. PREETILAL reported in [2002] 1 SCC Pg.100. Relevant observations in para-12 are quoted as under :-

"12. We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned Single Judge in a case where judicial mind would be tempted to utilize all possible legal measure to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded that the power conferred on the High Court under Article 226 and 227 of the Constitution is to advance justice and not to thwart it [vide State of U.P. v. District Judge, Unnao]. The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law."

Recently, the Apex Court has examined this question in reported decision in the case of ESSEN DEINKI V. RAJIV KUMAR, 2003 SC Labour & Service page 13. Relevant paragraphs are as under:

2. Generally speaking, exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in

nature. It is so exercised in the normal circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of natural justice, to name a few. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdiction of the courts below. The finding of fact being within the domain of the inferior tribunal, except where it is a perverse recording thereof or not based on any material whatsoever resulting in manifest injustice, interference under the article is not called for.

3. The observations above, however, find affirmance in the decision of this Court in Nibaran Chandra Bag V. Mahendra Nath Ghughu. In Nibaran this Court has been rather categorical in recording that the jurisdiction so conferred is by no means appellate in nature for correcting errors in the decision of the subordinate courts or tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority. More recently, in Mani Nariman Daruwala Vs. Phiroz N.Bhatena this Court in a similar vein stated: (SCC pp. 149-50, para 18)

"In the exercise of this jurisdiction the High Court can set aside or ignore the findings of fact of an inferior court or tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the court or tribunal who (sic) has come or in other words it is a finding which was perverse in law. Except to the limited extent indicated above the High Court has no jurisdiction to interfere with the findings of fact."

4. Needless to record that there is total unanimity of judicial precedents on the score that error must be that of law and patently on record committed by the interior tribunal so as to warrant intervention - it ought not to act as a court of appeal and there is no dissension or even a contra-note being sounded at any point of time till date. Incidentally, the illegality, if there be any, in an order of an inferior tribunal, it would however be a plain exercise of

jurisdiction under the article to correct the same as otherwise the law courts would fail to subserve the needs of the society since illegality cannot even be countenanced under any circumstances.

5. In this context reference may also be made to a still later decision of this Court in the case of Savita Chemicals (P) Ltd. Vs. Dyes & chemical Workers' Union wherein this Court in para 19 of the Report observed: (SCC p. 166)

"Under Article 227 of the Constitution of India, the High Court could not have set aside any finding reached by the lower authorities where two views were possible and unless those findings were found to be patently bad and suffering from clear errors of law."

This Court is having very limited jurisdiction under Article 226 and/or 227 of the Constitution of India. It is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the labour court. The view taken by the Apex Court in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Another reported in 2000 SCC [Labour and Service] pg.471, the Apex Court has held that while exercising the powers under Article 226 and 227 of the Constitution, interference with pure finding of fact and Reappreciation of the evidence is held to be impermissible. The High Court does not exercise appellate jurisdiction under Article 226. Even insufficiency of evidence or that another view is possible, it is held that no ground to interfere with the findings of the Industrial Tribunal. Recently also, the Apex Court has considered this aspect in case of SUGARBAI M. SIDDIQ AND OTHERS V. RAMESH S. HANKARE reported in 2001 [8] SCC pg.477, the Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower court / tribunal but with its decision-making process. High Court must ascertain whether such Court or tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with, otherwise, not.

23. Therefore, considering the above observations and having this Court limited jurisdiction, the petition filed by the District Panchayat, Junagadh being Special Civil Application No.12159 of 1993 and petition filed by

the Director of Agriculture being Special Civil Application No.9027 of 1994 are required to be dismissed. Accordingly, all the petitions are dismissed and award passed by the Industrial Tribunal in question is confirmed.

24. The interim order, which has been passed by this Court dated 3rd October 1994 is also vacated with further direction to the District Panchayat, Junagadh and Director of Agriculture Department of the State of Gujarat to implement the award passed by the Industrial Tribunal, Rajkot in reference Nos. ITR No.267 of 1988 and 268 of 1988 dated 13th October 1992 and made permanent all the concerned 10 workmen as per the direction issued by the Tribunal and pay the salary and other all service benefits to the concerned 10 workmen with arrears as per the direction issued by the Tribunal and in between if any employee has been retired from service, then whatever benefits after retirement as per service condition of the District Panchayat, Junagadh is available to such retired employee, would be paid to such employee including pension, gratuity and other leave encashment and other service benefit, which are accrued in favor of the workmen concerned within a period of 3 months from the date of receiving the copy of the said order. In case during the pendency of the petition and after the award passed by the Tribunal, if any workman had died, then whatever benefits are available to such workman, the same shall be paid to the widow or other legal heir within a period of 3 months from the date of receiving the copy of the said order.

25. Mrs.D.T.Shas has submitted that one petition is relating to implementation of 5th Pay Commission report in favour of the concerned workman after the award has been implemented by the petitioner District Panchayat, Junagadh and Director of Agriculture Department, State of Gujarat, it is open for the workman concerned to approach the concerned District Panchayat, Junagadh and Director of Agriculture Department, State of Gujarat for implementation of 5th Pay Commission report in their favour. In case if no response is given by either petitioner District Panchayat, Junagadh and Director of Agriculture Department of State of Gujarat, then it is open for the workman concerned to approach in accordance with law. In result all the three petitions, Special Civil Application No.12159 of 1993, Special Civil Application No.12160 of 1993 and Special Civil Application No.9027 of 1994 are dismissed with cost. The cost is quantified at Rs.10,000/- and all the ten workmen entitled the amount of cost by each one Rs.1,000/from

District Jilla Panchayat, Junagadh no cost against Director of Agriculture Department, rest of the petitions are disposed of accordingly.

Office if directed to send immediately writ of this order to the District Panchayat, Junagadh and Director of Agriculture Department, State of Gujarat without fail. Over and above, direct service is permitted to the respondent workmen. The petitions dismissed with no order as to costs.

(H.K.Rathod, J)

/MPS/